

# Exhibit 2



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# FAQs: Disclosure of Test Data and Test Materials

April 11, 2019

The issue of the disclosure of test data and test materials raises many practical and ethical concerns for psychologists who develop, validate, and use tests in a wide variety of settings (e.g., clinical, educational, organizational). As a result, the Committee on Psychological Tests and Assessment (CPTA) assembled a list of FAQs for easy reference to address questions and issues that psychologists commonly raise regarding the disclosure of test data and test materials.

Answers to the FAQs below are consistent with the *Ethical Principles of Psychologists and Code of Conduct* (APA, 2017), hereinafter referred to as the *Ethics Code*, and the *Standards for Educational and Psychological Testing* (2014), hereinafter referred to as the *Testing Standards*). See the References section for the full citations.

Psychologists are encouraged to become familiar with these standards and principles that apply to specific settings (e.g., schools, organizations, health care) as well as considerations for the uses of test data and related materials; and it is helpful to revisit these relevant standards and principles periodically as a professional reminder to oneself. Psychologists may also wish to obtain legal or other professional advice concerning relevant federal and state statutes, licensing laws, and other regulations and rules relevant to the release of test data and testing materials (e.g., *Ethics Code*, Standard 9.04).

Answers to these FAQs are not intended to establish guidelines, nor are they intended to establish standards of conduct or care for psychologists relative to disclosure of test data and testing materials, nor do they substitute for the advice of an attorney. Rather, the answers to the FAQs are intended to inform professional judgment and not supplant it.

The Committee on Psychological Tests and Assessment developed this statement. Correspondence concerning this report should be addressed to the Committee on Psychological Tests and Assessment, Science Directorate, American Psychological Association, 750 First Street, NE, Washington DC 20002-4242.

## I. General Issues

## II. Access to Test Data and Test Materials

## III. Informing the Test Taker of the Purpose, Use, and Results of Testing

## IV. Releasing Test Data and Related Materials with or Without the Consent of the Test Taker

## V. Test Security and the Release of Test Data and Materials

### 10. What needs to be considered when releasing test data and test materials to unqualified persons?

Psychologists usually inform persons or agencies requesting test data of the psychologist's obligations to the *Ethics Code* and professional standards and practices, which includes taking reasonable steps to limit the misuse of assessment results, including the release of test data to persons qualified to use such information.

The *Testing Standards* (Standard 9.1) note that responsibility for test use is only assumed by, and delegated to, persons with training and experience necessary to handle the responsibility in a professional and technically adequate manner. Concerns regarding test data release to unqualified individuals include: incompetent test interpretation resulting in misguided decisions based on a misunderstanding of the test, test data, test materials, and test reports; an underappreciation of the limitations of test data and test materials used out of context and without professional guidance; and the potential misuse of data and materials which could have harmful effects on the client, patient, or others. The psychologist's responsibilities in these respects extend to

raw test data and test materials, such as responses to test items or recording of observations during assessment that may be contained in test protocols or testing records.

#### 11. In the era and spirit of open science and the information age, why can't I simply release test materials?

The critical concerns regarding the release of test materials primarily relate to test security, the potential invalidation of tests, copyright laws, and contractual obligations. Psychologists are required by the *Ethics Code* to maintain the integrity and security of tests and other assessment techniques consistent with law and contractual obligations (Standard 9.11). This is important for several reasons.

Disclosure of secure testing materials (e.g., test items, test forms, test responses, test scoring, or test protocols) to unqualified persons may not only render the test invalid for any future use with that individual; doing so may also jeopardize the validity, security, and integrity of the test for other test-takers and other stakeholders. Such releases impose very concrete harms to the general public, e.g., a loss of effective assessment tools; a disruption of research and practice when assessments must change due to a security breach; and a devaluing or nullifying of scores that were previously obtained under secure conditions.

Psychometrically well-developed tests of intelligence, personality, achievement, and other constructs require a considerable investment of time, money, and expertise. Furthermore, there may be a limited number of standardized psychological tests considered appropriate for a given purpose (in some circumstances only a single instrument). Therefore, tests often cannot easily be replaced or substituted when the security of a test is compromised by test takers, administrators, groups, technologies, or in other ways. Test owners and developers may file breach of contract claims against psychologists who violate the test-security terms of their test purchase or lease agreements.

#### 12. What copyright issues are of importance when releasing test materials?

Psychologists are legally and ethically responsible for respecting test copyrights (*Testing Standards* 9.22, 9.23). Tests and test protocols are generally protected by the federal copyright laws and usually may not be copied without permission of the copyright holder. Consequently, psychologists mandated by law or regulation to provide copies of a test, test manual, or test protocols need to consider copyright laws that may potentially be violated by releasing such materials. Psychologists are encouraged to be familiar with the terms of their test purchase or lease agreements with test publishers as well as reasonably informed about relevant provisions of the federal copyright laws. Psychologists may wish to consult with test publishers and/or knowledgeable experts to resolve possible conflicts before releasing specific test materials to ensure that the copyright and proprietary interests of the test publisher are not compromised. For practitioners responding to subpoenas, see FAQ 16.

- ▶ **VI. Conforming to Federal and State Statutes and Rules, Regulatory Mandates, and Institutional/ Organizational Rules and Requirements**
- ▶ **VII. Releasing Test Data and Test Materials to Third-Party Payers**
- ▶ **VIII. Releasing Test Data and Test Materials When the Organization Is the Client**
- ▶ **IX. Role of Psychologists in Forensic Contexts**
- ▶ **X. Other Issues**
- ▶ **References**

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